COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)
(2006-2007)

FOURTEENTH REPORT

[ACTION TAKEN REPORT OF THE COMMITTEE ON THE RECOMMENDATIONS /OBSERVATIONS CONTAINED IN FIFTH REPORT (2004-2005) (FOURTEENTH LOK SABHA)]

(PRESENTED ON 13.12.2006)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2006-2007)

1. **Shri N. N. Krishnadas** - **Chairman**
2. Shri Anandrao Vithoba Adsul
3. Shri Giridhar Gamang
4. Shri Loganathan Ganesan
5. Shri N. Y. Hanumanthappa
6. Shri Ram Singh Kaswan
7. Shri Faggan Singh Kulaste
8. Shri Dalpat Singh Paraste
9. Shri Jaysingrao Gaikwad Patil
10. Shri Lalmani Prasad
11. Shri Anantha Venkata Rami Reddy
12. Shri Bhupendrasinh Solanki
13. Shri Ramjilal Suman
14. Shri A.K.A. Vijayan
15. Shri Madhu Goud Yaskhi

SECRETARIAT

1.	Shri J.P. Sharma	-	Joint Secretary
2.	Shri A. Louis Martin	-	Director
3.	Shri R.K. Bajaj	-	Deputy Secretary
4.	Shri K. Jena	-	Under Secretary

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Fourteenth Report.

2. This Report relates to the action taken on the recommendations of the Committee contained in the Fifth Report (2004 – 2005) (Fourteenth Lok Sabha) which was presented to Lok Sabha on 18 March, 2005.

3. The Committee also wish to place on record their appreciation of the valuable work done by the predecessor Committee.

4. The Committee considered and adopted this Report at their sitting held on 18.10.06.

5. The summary of recommendations contained in the Fifth Report and action taken reply of the Government thereon have been reproduced in Appendix I of the Report.

6. The Extracts of the Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.

7. An analysis of the action taken by Government on the recommendations contained in the Fifth Report of the Committee (14th Lok Sabha) is given in Appendix III.

N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

New Delhi;
October, 2006
Asvina, 1928 (Saka)

REPORT

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the recommendations contained in their Fifth Report (Fourteenth Lok Sabha) which was presented to Lok Sabha on 18 March, 2005. The Fifth Report dealt with the following chapters: -

(i) Absence of limitation provision for exemptions under Section 10(23C)(iv) of the Income Tax Act

(ii) The Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003 (GSR 114 of 2003)

(iii) Discrimination in the duration of probationary period (GSR 140 of 2001)

(iv) Short title of the Commemorative Coins on Maharana Pratap (GSR 432-E of 2003)

2. The shortcomings observed during scrutiny of the rules mentioned in chapters (i) to (iv) above were brought to the notice of the concerned Ministries for their comments/necessary corrective action. The Ministries concerned accepted those shortcomings and amended the relevant rules to rectify the same. As such, no action was pending on the part of the Government with regard to recommendations of the Committee contained in these Chapters. A statement showing the Action Taken by the Government on the recommendation contained in the Fifth Report is given in Appendix-I

N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

New Delhi:
October, 2006
Asvina, 1928 (Saka)

APPENDIX – I

(vide Para 5 of the Introduction of Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE FIFTH REPORT OF THE COMMITTEE (14th LOK SABHA)

1. Absence of limitation provision for exemptions under Section 10(23C)(iv) of the Income Tax Act

(Recommendation Para 1.17)

On 9 July, 2004, as many as 52 notifications were laid on the Table of Lok Sabha notifying 42 organisations for exemption of Income Tax under Section 10(23C)(iv) of the Income Tax Act which provides for exemption to a fund or institution established for charitable purposes. The exemptions related to assessment years as far back as 1986-87. The Committee feel that grant of exemption to organisations after a gap of as long as 16 years does raise doubts about the rationale and bona-fides of such a step. According to the Department of Revenue, neither the Income Tax Act nor the rules framed thereunder prescribed any time limit either for the assessee to file an application under this category or for the Central Government to notify an applicant under the Section. Absence of a limitation provision is obviously a lacuna in the Act/Rules which should have been suitably got amended by the Department of Revenue on its own initiative. The attempt of the Department to justify this lapse on the plea that the provisions have been kept as such in order to give exemption to genuine cases of charitable activities is hardly convincing as the Ministry's explanation has not addressed the question of prolonged time lag. The Committee would urge the Ministry of Finance to look into this question afresh and take appropriate steps to incorporate a suitable limitation provision.

(Recommendation Para 1.18)

During oral evidence on 26 October, 2004, a representative of the Department of Revenue stated that in June, 2001 the scope for re-opening past cases has been brought down from 10 years to six years implying thereby that the retrospective effect to the notification under Section 10 (23C) (iv) would also be limited to this period of six years. This, however, does not seem to be so. The fact that the Ministry have issued notification under this Section as recently as in March, 2004 giving the benefit of exemption to the assessment years of 1986-87 which dates back to over 16 years clearly shows that the

said limitation provision does not apply to notification under Section 10(23C) (iv). The Committee feel that as already recommended in the preceding paragraph , there is a need for making a limitation provision under Section 10(23C)(iv).

Reply of the Ministry

As recommended by the Committee, the issues regarding the limitation provisions in Section 10(23C) (iv) were examined by the Government and vide the Taxation Laws (Amendment) Bill, 2005, introduced in the Lok Sabha on 12th May 2005, the Government has proposed to provide a one year time limitation for grant or refusal of the notification under Section 10 (23C) (iv) of the Income Tax Act, 1961. The relevant portion of the Taxation Laws (Amendment) Bill, 2005 is reproduced as under:-

"(b) in clause (23C),-
(i)……..

(iii) after the eight proviso, the following provisos shall be inserted namely:-

"Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President, every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:…."

Further, in order to ensure that there is no delay in filing of application by the institutions, vide the Finance Bill, 2006, introduced in Lok Sabha on 28th February, 2006, the Government has proposed that any application requesting for notification under Section 10 (23C) (iv) shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought. The relevant portion of the Finance Bill, 2006 is reproduced as under:-

"(d) in clause (23C)-

(i) after the eleventh proviso, the following proviso shall be inserted with effect from the 1st day of June, 2006, namely:-

"Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made at any time during the financial year

immediately preceding the assessment year from which the exemption is sought";

[Ministry of Finance File No. 173/25/2004-ITA dated 30.03.2006]

(Recommendation 1.19)

The Committee note that delay in filing of application by the Institutions is one of the reasons for inordinate delay in notification under Section 10(23C) (iv). The Ministry in this connection, cited a case of a Council which filed an application on 7.3.2000 after a gap of about 15 years for the assessment years 1986 – 87 to 1988 – 89. The Committee hope that such instances would now cease in view of incorporation of a provision w.e.f. 1.4.2003 making it compulsory for the charitable institutions to file their returns every year.

Reply of the Ministry

In order to ensure that there is no delay in filing of application by the institutions, vide the Finance Bill, 2006, introduced in Lok Sabha on 28th February, 2006, the Government has proposed that any application requesting for notification under Section 10(23C)(iv) shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought. The relevant portion of the Finance Bill, 2006 is reproduced as under :-

"(d) in clause (23C)-

(i) after the eleventh proviso, the following proviso shall be inserted with effect from the Ist day of June, 2006, namely :-

"Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after Ist day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought".

[Ministry of Finance File No. 173/25/2004-ITA dated 30.03.2006]

(Recommendation 1.20)

The Committee find that another reason for delay in notification of charitable institutions for exemption under Section 10(23C)(iv) is the inordinately long time taken by the Department in processing the applications. For instance one applicant viz. West Zone Cultural Centre, Udaipur filed an application on 9 September, 1996 and another applicant viz. National Stock Exchange Investor's Protection Fund Trust, Mumbai filed application on 23.7.1996 and the Department have taken as long as seven years for notifying them. An analysis of reasons advanced by the Department in this regard would show that the Department has been very slow in dealing with the applications, seeking desired information from the applicants and taking a decision in the cases. The Committee wonder whether the Department exercise any check on delays. The Committee desire that some time limit should be fixed for disposal of cases through Departmental instructions, if not already done and ensure that the instructions are followed strictly in letter and spirit.

Reply of the Ministry

The recommendation of Committee that some time limit should be fixed for disposal of applications under Section 10(23C)(iv) of Income Tax Act, 1961, was examined by the Government and vide the Taxation Laws (Amendment) Bill, 2005, introduced in the Lok Sabha on 12th May, 2005, the Government has proposed to provide a one year time limitation for grant or refusal of the notification under Section 10(23C)(iv) of the Income Tax Act, 1961. The relevant portion of the Taxation Laws (Amendment) Bill, 2005 is reproduced as under :-

"(b) in clause (23C),-
(i)……..

(iv) after the eighth proviso, the following provisos shall be inserted namely :-

"Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President, every notification under sub-clause (iv) or sub-clause(v) shall be issued or approval under sub-clause (vi) or sub-clause(via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received….."

[Ministry of Finance File No. 173/25/2004-ITA dated 30.03.2006]

(Recommendation 1.21)

The Committee suggest that normally a Fund or Institution should be notified for exemption under Section 10 (23C) (iv) of the Income Tax Act well before the end of the relevant assessment year. If, for any reason, the Fund or Institution could not be notified in time, the notification should be accompanied by an explanatory memorandum giving reasons for delay in notification.

Reply of the Ministry

Vide the Finance Bill, 2006, introduced in Lok Sabha on 28th February, 2006, the Government has proposed that any application requesting for notification under Section 10(23C)(iv) shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought. The relevant portion of The Finance Bill, 2006 is reproduced as under :-

"(d) in clause (23C)-

(i) after the eleventh proviso, the following proviso shall be inserted with effect from the Ist day of June, 2006, namely :-

"Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after Ist day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought";

Further, vide The Taxation Laws (Amendment) Bill, 2005, introduced in the Lok Sabha on 12th May, 2005, the Government has proposed to provide a one year time limitation for grant or refusal of the notification under Section 10(23C)(iv) of the Income Tax Act, 1961. The relevant portion of the Taxation Laws (Amendment) Bill, 2005 is reproduced as under :-

"(b) in clause (23C),-
(i).....
(v) after the eighth proviso, the following provisos shall be inserted, namely:-

"Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause(iv) or sub-clause(v) shall be issued or

approval under sub-clause(vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received…."

[Ministry of Finance File No. 173/25/2004-ITA dated 30.03.2006]

The Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003 (GSR 114 of 2003)

(Recommendation 2.7)

The Committee observe that Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003 enables an aggrieved person to appeal against an order of cancellation or suspension of certificate of competency by the Director General of Shipping within 30 days. However, no time-limit for disposal of an appeal has been prescribed, when this lacuna was pointed out, the Ministry of Shipping have conveyed that they have no objection for laying down a time limit of 90 days for disposal of appeal. The Committee desire that the Ministry should suitably amend the rules to incorporate the time limit regarding disposal of appeals.

Reply of the Ministry

As desired, Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003 has been suitably amended to incorporate a period of 90 days for disposal of appeal by the Director General. A copy of the Notification dated 16th June, 2005 to amend the rules sent to the Government of India Press for publication in the Gazette of India Extra-ordinary is enclosed.

[Ministry of Shipping, Road Transport & Highways O.M.No. SR-11012/9/ 2002 - MA dated 17.6.2005]

(Recommendation 2.8)

The Committee note that there is also another shortcoming in Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003. The rule states that the decision of the Director General of Shipping "shall be final" on matters regarding appeal against cancellation or suspension of the certificate of competency. The Committee feel that this clause gives an impression that the jurisdiction of the Law Courts is being ousted in this matter. According to the Ministry of Shipping, this was meant to give the required finality to the decision of the Director General as an Appellate Authority and the provision would, in no way, take away the powers of or oust the jurisdiction of the Courts. The Committee desire that

this interpretation of the Ministry ought to be reflected in the Rules, by suitably amending the wording of the rule to clearly brig out this position.

Reply of the Ministry

As desired, Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003 has been suitably amended and the statement "that the decision of Director General of Shipping shall be final" has been altogether deleted from rule 5. A copy of the Notification dated 16th June, 2005 to amend the rules sent to the Government of India Press for publication in the Gazette of India Extra-ordinary is enclosed.

[Ministry of Shipping, Road Transport & Highways O.M.No. SR-11012/9/ 2002 - MA dated 17.6.2005]

Discrimination in the duration of probationary period (GSR 140 of 2001)

(Recommendation 3.5)

The Committee observe that the Farm Machinery Training and Testing Institute (Department of Agriculture and Cooperation) Group 'A' and Group 'B' (Gazetted) Posts Recruitment Rules, 2001 prescribed longer probation period of two years for promotee officers as compared to the probationary period of one year for the direct recruits. The Committee have time and again emphasised in the past that there should be no discrimination in the matter of probationary period between promotees and direct recruits. The Committee note with satisfaction that on this fact being pointed out, the Ministry of Agriculture (Department of Agriculture & Cooperation) have brought out a notification in superssesion of the earlier rules amending Col. 10 to provide for a probation period of one year both for the direct recruits and promotees. The Committee urge the Ministry of Agriculture (Department of Agriculture & Cooperation) to scrupulously follow the Committee's recommendations and the instructions/guidelines issued by DOPT in future.

Reply of the Ministry

Recruitment Rules for the post of Agronomist & Instrumentation Engineer were earlier notified on 24.1.2001. It was pointed out that under Col. 10 of the Schedule period of probation has been indicated as one year only for direct recruitment and two years for promotee officers. They had asked for the rationale behind prescribing a longer probation period for promotees. The matter was referred to DOPT and UPSC for their approval/clearance. DOPT and UPSC have communicated their clearance and hence fresh notification has been issued. The Ministry of Agriculture (Department of Agriculture and Cooperation) have since issued a notification dated 16.4.2004 in supersession

of the earlier Rules and have prescribed a uniform probation period of one year for both direct recruits and for promottees. Committee's recommendations have been noted for future guidance.

[Ministry of Agriculture O.M. No. 13-3/98-My (Admn.) (Pt.) dated 8.6.2005]

(Recommendation 3.7)

The Committee observe that Col. 6 & 7 of the Schedule to the Farm Machinery Training and Testing Institute (Department of Agriculture and Cooperation) Group 'A' and Group 'B' (Gazetted) Posts Recruitment Rules, 2001 displayed wrong entries. On the error being pointed out, the Ministry of Agriculture (Department of Agriculture and Cooperation) have rectified the error by suitably amending the rules vide notification dated 16.4.2004. The Committee expect the Ministry to exercise sufficient care to see that no such mistakes creep again into their notifications.

Reply of the Ministry

Recruitment Rules for the post of Agronomist & Instrumentation Engineer were earlier notified on 24.1.2001. Lok Sabha Secretariat vide their O.M. dated 16.7.2001 have pointed out that entries in respect of Col. 6 and 7 of the Recruitment Rules have been inter-changed i.e. provision regarding age limit which were to appear in Col. 7 have appeared in Col. 6 and provision regarding benefits of added years of service which was to be mentioned under Col. 7 have been wrongly mentioned under Col.6. The Ministry of Agriculture (Department of Agriculture and Cooperation) have accordingly issued a corrigendum for interchanging the Col. 6 and Col. 7. Committee's recommendations have been noted for future guidance.

[Ministry of Agriculture O.M. No. 13-3/98-My (Admn.) (Pt.) dated 8.6.2005]

Short title of the Commemorative Coins on Maharana Pratap (GSR 432-E of 2003)

(Recommendation 4.3)

The Short title of the Commemorative Coins on Maharana Pratap notified by the Ministry of Finance (Deptt. of Economic Affairs) on 23 May, 2003 was too long to be called a short title. The Short Title read as follows :-

"The Coinage (Standard Weight and Remedy of Commemorative Coins) of the Hundred Rupees (Containing Silver 50%, Copper 40%, Nickel 5% and Zinc 5%), Ten Rupees (containing Copper 75% and Nickel 25%) and One Rupee

Ferritic Stainless Steel (containing Iron 82% and Chromium 18 %) coined in honour of "MAHARANA PRATAP" Rules, 2003"

On the matter having been taken up with the Ministry of Finance (Department of Economic Affairs), the Ministry in consultation with the Ministry of Law have amended the Short title to make it short and notified it in the Gazette. The amended Short title reads as follows :

"The Coinage of Hundred Rupees, Ten Rupees and One Rupee coined in honour of "MAHARANA PRATAP" Rules, 2003"

The Committee urge the Ministry to pay attention to all aspects of rule making and to ensure that flaws of this nature do not recur in future.

Reply of the Ministry

The Ministry have noted the recommendations of the Committee for future compliance.

[Ministry of Finance Letter No. 7/4/2003-Coin.II dated 5.7.2005]

APPENDIX –II

(see Para 6 of the Introduction of the Report)

MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2006-2007)

The Committee met on Wednesday, 18 October, 2006 from 15.00 to 15.45 hours in Committee Room No. 62, First Floor, Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Anandrao Vithoba Adsul
3. Shri Ram Singh Kaswan
4. Shri Jaisingrao Gaikwad Patil
5. Shri Bhupendrasinh Solanki
6. Shri Ramji Lal Suman
7. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri J. P. Sharma - Joint Secretary
2. Shri A. Louis Martin - Director
3. Shri R. K. Bajaj - Deputy Secretary
4. Shri K. Jena - Under Secretary

…..contd./-

2. At the outset, the Chairman, Committee on Subordinate Legislation welcomed the members to the sitting of the Committee.

3. Thereafter, the Committee took up for consideration the draft Thirteenth and Fourteenth (ATR) Reports and adopted the same. The Committee also authorised the Chairman to present the same to the House.

XX XX XX

The Committee then adjourned.

APPENDIX-III

(vide para 7 of the introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE FIFTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)

I.	Total No. of recommendations/observations made	10
II.	Recommendations that have been accepted by the Government [vide recommendations at Sl. Nos.1.17-1.21, 2.7-2.8, 3.5,3.7 and 4.3]	10
III.	No. of recommendations which the Committee do not want to pursue in view of Government reply	Nil
IV.	Percentage of recommendations accepted	100%